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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,785	10/29/2001	Nedeljko Vladimira Gvozdic	MAC - 198	9527
7590	10/08/2003		EXAMINER	
Robert L. McKellar Suite # 2 816 West Wackerly St. Midland, MI 48640-2730			CHANG, VICTOR S	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/020,785	GVOZDIC, NEDELJKO VLADIMIRA	
	<b>Examiner</b>	<b>Art Unit</b>	
	Victor S Chang	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-91 is/are pending in the application.
  - 4a) Of the above claim(s) 1-3,5-41 and 67-76 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 4,42-66 and 77-91 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                            | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>1029</u> . | 6) <input type="checkbox"/> Other:  |

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A is a reinforced physically crosslinked PVA structure of claim 1.

Species B is a laminated physically crosslinked PVA structure of claim 2.

Species C is an impregnated physically crosslinked PVA structure of claim 3.

Species D is a reinforced cellular physically crosslinked PVA structure of claim 4.

Species E is a laminated cellular physically crosslinked PVA structure of claim 5.

Species F is an impregnated cellular physically crosslinked PVA structure of claim 6.

Species G is an impregnated cellular covalently crosslinked PVA structure of claim 7.

Species H is a composite of two or more physically crosslinked PVA of claims 8-11.

Species I is a composite of two or more cellular physically crosslinked PVA of claims 12-15.

Species J is a composite of two or more cellular covalently crosslinked PVA of claims 16-19.

Species K is a composite of cellular physically crosslinked PVA of claims 20-23.

Species L is a composite of bulk physically crosslinked PVA of claims 24-27.

Art Unit: 1771

Species M is a composite of bulk physically and cellular covalently crosslinked PVA of claims 28-31.

Species N is a cellular physically crosslinked PVA structure with collapsed walls of claims 32-36.

Species O is a cellular physically crosslinked PVA structure with expanded walls of claims 37-41.

Species P is a cellular and bulk physically crosslinked PVA structure for claims 67-76.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 42-66 and 77-91 are generic to 4-6, 12-15, 20-23 and 32-41.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Robert McKellar on 10/1/2003 a provisional election was made without traverse to prosecute the invention of Species D, claims 4, 42-66 and 77-91. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-3, 5-41 and 67-76 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Objections***

3. Claims 4, 42, and elsewhere, are objected to because of the following informalities:

In claim 4, line 2, and elsewhere, the Examiner suggests to change "cross linked" to --crosslinked--, so as to be consistent with typical technical terminology.

In claim 42, line 4, and elsewhere, the Examiner suggests to change "cross linkable" to --crosslinkable--, so as to be consistent with typical technical terminology.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4, 42-66 and 77-91 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are narrative in form and replete with indefinite and functional or operative language. For example:

In independent claims 4, 42, 47, 52, 57, 62, 77, 82 and 87, line 1 of each claim, the term "having" is vague and indefinite, i.e., it is not clear the claim is intended to be an open or closed transitional phrase. For the purpose of this Office action, it is presumed to be equivalent to "comprising". Clarification is requested. See MPEP § 2111.03.

In claim 4, line 4, the phrase "capable of" is vague and indefinite. It has been held that a recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to do so. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

In claim 42, lines 8-12, and elsewhere, the phrase "a material selected from the group consisting essentially of ... form a solution" is clearly an improper Markush language. Appropriate correction is requested. See example in MPEP § 2173.05(h).

In claim 42, line 16, and elsewhere, the phrase "providing conditions" is vague and indefinite, i.e., it is unclear what is the scope of "providing conditions".

In claim 42, line 19, and elsewhere, the phrase "room temperature" is vague and indefinite, the Examiner suggests to change it to --ambient temperature--.

Art Unit: 1771

In claim 42, line 20, and elsewhere, the phrase "by a means which does not" is vague and indefinite, i.e., it is unclear what is the scope of the claimed element.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 4, 42-66 and 77-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art.

For claim 4, it is noted that Applicant appears to have admitted that reinforced, laminated, composite and impregnated structures of physically crosslinked bulk and cellular polyvinyl alcohol hydrogels are known art (Specification, page 5, second full paragraph).

For product-by-process claims 42-66 and 77-91, it should be pointed out that product-by-process claims are product claims and that to be limiting in a product claim, a process limitation must be evidenced as effecting the structure or chemistry of the resultant product over the prior art. Further, the burden of proof for this showing is on Applicant after the Examiner presents an otherwise *prima facie* rejection. See MPEP § 2113. Additionally, the Examiner notes that it appears critical elements relating to a plurality of species as set forth above are missing from claims 42-66 and 77-91. As such, these claims also appear to be vague and indefinite; the Examiner suggests

Art Unit: 1771

critical structural elements need to be clearly identified and incorporated, and claims unrelated to Species D of claim 4 should be withdrawn as well.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 703-605-4296. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

VSC

DANIEL ZIRKER  
PRIMARY EXAMINER  
GROUP 1900  
1700

*Daniel Zirker*